

# INFORMATION SHEET

## DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

**DISTRICT OFFICE:** Saint Paul District

**FILE NUMBER:** 2005-49

**REGULATORY PROJECT MANAGER:** Rebecca Gruber **Date:** January 24, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** Y **Date:** 1/24/05

**At the project site (Y/N)** N **Date:**

### PROJECT LOCATION INFORMATION:

State: Wisconsin

County: Milwaukee County

Center coordinates of site by latitude & longitude coordinates: 42.9484°N, 87.9662°W (NAD 27)

Approximate size of site/property (including uplands) in acres: 6 acres

Name or waterway of watershed: Milwaukee River watershed

Type of Aquatic Resource <sup>1</sup> :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	0.1 ac								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup>	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?				X	

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:**                      Preliminary      Or Approved **X**

**ADDITIONAL INFORMATION SUPPORTING NJD** (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

Three wetlands are present on the subject property. The northern-most wetland has been characterized as a lowland hardwood wetland dominated by green ash, cottonwood, and red osier dogwood with a sedge understory. The central and southern-most wetland basins were characterized as a shrub carr and lowland hardwood forests (respectively). Dominant vegetation in these two basins consisted of buckthorn, reed canary grass, red osier dogwood, green ash, gray dogwood, and climbing nightshade. The northern-most wetland basin (0.10 acre) is the subject of this document.

The northern-most wetland lies entirely within the SE ¼ of Section 25, T. 6N., R. 21E., Milwaukee County, Wisconsin. As such, the wetland boundaries lie entirely within the State of Wisconsin. In addition, the wetland does not display any connection to, nor is it considered adjacent to, any “waters of the U.S.” The other two basins found on the subject property are the closest “waters of the U.S.” to this basin; yet, this basin is separated by an expanse of upland. The NRCS Soil Survey shows that a hydric soil connection once likely connected this basin, however, this connectivity has been severed by adjacent residential development. For these reasons, the northern-most wetland is considered an intrastate, isolated wetland.

The northern-most wetland is not, nor is it likely to be, used by interstate or foreign travelers for recreation, industry, or commerce. The wetland lies on private property, with no public access. Lastly, the wetland does not contain fish or shellfish which could be taken and sold. For these reasons, no interstate commerce nexus to this wetland has been established.

Lastly, as indicated in the first paragraph, two other wetlands were located on the subject property. These two wetlands are part of the tributary system to Honey Creek via constructed drainage. Honey Creek is part of the tributary system to the Milwaukee River, a navigable water of the United States.